

## MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance Letter No. 6, New Start Construction Projects--LCA Provisions to Account for Ability to Pay Determinations

## 1. References:

a. CECW-RP memorandum dated 23 November 1987, Subject: Ability to Pay for Flood Control Projects.

b. EC 1165-2-144.

2. Reference 1.a. provided guidance on how to apply the ability to pay test for all flood control projects in the plan formulation phase and LCA development phase. The purpose of this letter is to provide the necessary language to be incorporated in LCA's. The language recommended herein is cross-referenced to the flood control model LCA in Appendix D of reference 1.b.

3. For flood control projects, a new article should be added to the Draft LCA after Article V entitled: Ability to Pay - Non-Federal Cost Share. The following two provisions have been developed to cover the case where a project fails the ability to pay test and the case where the test results in a determination that a reduction in the non-Federal cost share is warranted.

a. For Projects Not Qualifying for a Reduction in Cost Sharing Under Ability to Pay:

Article VI. Ability to Pay Non-Federal Share

The project does not qualify for a revision to the non-Federal cost share for flood control based on estimated flood control benefits and costs and on application of guidelines published as flood control cost sharing requirements under the Ability to Pay provision; interim final rule (Vol. 52 Federal Register Pages 35872-35892, 1987 to be codified at (33 CFR, Sections 241.1-.6)), implementing Section 103(m) of the Water Resources Development Act of 1986.

b. For Projects Qualifying for a Reduction in Cost Sharing Under Ability to Pay:

Article VI. Ability to Pay Non-Federal Share

The project qualifies for a revision to the non-Federal cost share for flood control based on estimated flood control benefits and costs and on application of guidelines, published at 33 CFR Part 241, 23 September 1987, regarding Ability to Pay, Section 103(m) of the Water Resources Development Act of 1986. The non-Federal flood control cost share as determined by the Ability to Pay Test is \_\_\_\_ percent, derived as exhibited in Exhibit A.

Upon completion of the project, this percentage will be compared to the percentage derived by dividing expenses incurred by the local sponsor under Article II, paragraphs C, D, and E, by total costs attributed to flood purposes. The smaller of the two percentages will be the maximum non-Federal cost share.

Add language to End of Article II D., Obligation of Parties:

At its sole discretion, the Government, during the period of construction, may perform relocations or alterations if necessary to ensure that the local sponsor's cost share does not exceed the non-Federal cost share determined in Article VI.

Add Language to End of Article VII D., Method of Payment:

If the local sponsor's total contribution under this agreement (including lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the local sponsor) exceeds the non-Federal cost share determined in Article VI, the Government shall, subject to the availability of appropriations, refund the excess to the local sponsor within 90 days of the final accounting. Nothing herein relieves the local sponsor of its 5 percent cash contribution required pursuant to Article II c., hereof.

4. A sample exhibit is enclosed that should be used in the case where a project qualifies for a reduction in the non-Federal cost share as a result of the Ability to Pay Test.

5. The POC for any questions on how to apply the Ability to Pay Test is Dr. Robert Stearns (CECW-RP) at 202-272-0120. The POC for any questions on the LCA provision is Doug Lamont (CECW-RN) at 202-272-0464.

FOR THE COMMANDER:

BORY STEINBERG  
Chief, Policy, Review, and Initiatives Division  
Directorate of Civil Works

## EXHIBIT A

Example One assumes the project beneficiaries are located in Barbour County, Alabama (the first county qualifying for a full reduction, when counties are listed alphabetically by state and county). The assumed benefit cost ratio is 1.1; the pre-test non-Federal share is 50 percent.

Example Two assumes the project beneficiaries are located in Autauga County, Alabama. The assumed benefit cost ratio and pretest normal non-Federal cost-share are, as in Example One, assumed to be 1.1 and 50 percent.

The last page of this exhibit contains replacement language for a multi-county project.

### Eligibility Factor

Section 103(m) of the Water Resources Development Act of 1986 states that any cost-sharing agreement for flood control made under the terms of Sec. 103 of the act shall be subject to the ability of a non-Federal interest to pay. The Corps' implementation for Section 103(m) is published as Flood Control Cost-Sharing Requirements Under the Ability to Pay provision; Interim Final Rule (Vol. 52) Fed. Reg. (35872-35892) (1987) (to be codified at 33 C.F.R., Sections 241.1 - .6). Pursuant to this rule, the ability-to pay cost share is calculated as follows:

For the Barbour Creek Project:

The estimated normal cost share (flood control costs only)= 50%

The ratio of flood control benefits to flood control costs = 1.10

The Benefits Based Floor =  $(1/4) \times 1.10 = .275$

Convert to percentage= 27.5

The project is located in Barbour County, Alabama

Per capita personal income index numbers (contained in 33 C.F.R. 241, Appendices A and B) are:

For Barbour County: 66.37

For Alabama: 76.90

The Eligibility Factor (EF) based on these values (derived from 33 C.F.R. 241.5b(5) ) = 1.00 [use formula p. 35876 of 1987 FEDERAL REGISTER]

Since the Eligibility Factor = 1, the ability to pay non-Federal cost share = Benefits Based Floor = 27.5 percent [figure should be rounded to nearest tenth of a percent].

Eligibility Factor less than 0

Section 103(m) of the Water Resources Development Act of 1986 states that any cost-sharing agreement for flood control made under the terms of Section 103m of the act shall be subject to the ability of a non-Federal interest to pay. The Corps' implementation for Section 103(m) is published as Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision; Interim Final Rule (Vol. 52) Fed. Re@. (35872-35892) (1987) (to be codified at 33 C.F.R., Sections 241.1 - .6). Pursuant to this rule, the Ability-to pay cost share is calculated as follows:

For the Autauga Creek Project:

The estimated normal cost share (flood control costs only)= 50%

The ratio of flood control benefits to flood control costs = 1.10

The Benefits Based Floor =  $(1/4) \times 1.10 = .275$

Convert to percentage = 27.5

The project is located in Autauga County, Alabama

Per capita personal income index numbers (contained in 33 C.F.R. 241, Appendices A and B) are:

For Autauga County: 77.01

For Alabama: 76.90

The Eligibility Factor (EF) based on these values (derived from 33 C.F.R. 241.5b(5) ) = .823 [use formula p. 35876 of 1987 FEDERAL REGISTER, use as many decimal places as necessary to permit rounding ability to pay share to the nearest tenth of one percent-see footnote 1]

Normal share -  $1/4$  Benefit/Cost ratio =  $(50-27.5) = 22.5$

Based on the EF of .823 , this project qualifies for a reduction of:

$.823 \times (50-27.5) = .823 \times 22.5 = 18.5175 = 18.5$  percent (1)

The ability to pay non-Federal cost share for this project is:

$50 - .823 \times (50 - 22.5) = 50 - 18.5 = 31.5$  percent.

(1)- If the Eligibility Factor had been stated as .82 rather than .823, the arithmetic would have yielded an ambiguous result with regard to the upper tenth of a percent. That is,  $.82 \times 22.5 = 18.45$ ; it is not clear whether this should be rounded to 18.4 or 18.5. Using an Eligibility Factor of .823 shows that it should be rounded to 18.5.

Replacement Language for Multi County/State Projects:

The project is located in the following counties and states (the parentheses indicates the percentage of benefits which can be located geographically in each of the counties and states:

County:

Autauga, Alabama (80%)

Barbour, Alabama (20%)

State:

Alabama (100%)

The per capita personal income index numbers (contained in 33 C.F.R. 241, Appendices A and B) are:

For Autauga County: 77.01

For Barbour County: 66.37

For Alabama: 76.90

The County index factor for the project =  $.8 \times 77.01 + .2 \times 66.37 = 75.52$

The State index factor for the project = 76.98

The Eligibility Factor (EF) based on these values (derived from 33 C.F.R. 241) = .96